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IN THE

Supreme Court of the United States

OCTOBER TERM, 1958

No. 555

THE NEZ PERCE TRIBE OF INDIANS AND WILLIAM N. STEVENS, *Petitioners,*

v.

FRED A. SEATON, Secretary of the Interior, *Respondent.*

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT

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PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT

Petitioners pray that a writ of certiorari issue to review the judgment of the United States Court of Appeals for the District of Columbia Circuit, entered in the above-entitled case on May 29, 1958.

CITATION TO OPINION BELOW

The opinion of the Court of Appeals for the District of Columbia Circuit is reported at 257 F. 2d 206,

and is reprinted as Appendix A hereto, p. 1a. The Court's unreported orders denying the petition for rehearing are annexed hereto as Appendix B, p. 2a. The oral statement of the District Court for the District of Columbia upon entering judgment is also unreported and is annexed hereto as Appendix C, p. 3a.

JURISDICTION

The judgment of the Court of Appeals was entered on May 29, 1958, and a timely petition for rehearing en banc was denied without opinion on September 5, 1958, Judge Burger dissenting. The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

QUESTIONS PRESENTED

1. Whether the plea of sovereign immunity prevents the District Court from considering the merits of a suit in which plaintiffs contend that defendant Secretary of the Interior is attempting to convey their land to third parties in excess of his statutory authority and is depriving them of their property without due process of law, in violation of the Constitution of the United States?

2. Whether plaintiffs, who merely seek injunctive relief (rather than mandamus), must show, in order to defeat a plea of sovereign immunity, that the Government officer has violated a "plain legal duty," and, if so, whether this duty must appear "plainly" from both pleadings or merely from the complaint?

STATUTE INVOLVED

Act of June 4, 1953, 67 Stat. 41, 25 U.S.C. Sec. 293a:

> "The Secretary of the Interior, or his authorized representative, is authorized to convey to

State or local governmental agencies or to local school authorities all the right, title and interest of the United States in any land and improvements thereon and personal property used in connection therewith heretofore or hereafter used for Federal Indian school purposes and no longer needed for such purposes: Provided, That the consent of the beneficial owner shall be obtained before the conveyance of title to land held by the United States in trust for an individual Indian or Indian Tribe: . . ."

STATEMENT OF THE CASE

A complaint was filed in the District Court for the District of Columbia, pursuant to Sec. 306 of Title 11 of the District of Columbia Code, seeking to enjoin the respondent from delivering a deed to petitioner Tribe's land to third parties and further to enjoin him from interfering with petitioners' use of certain other land similarly situated, which included the Tribe's cemeteries.

The pleadings in this case show that the petitioner, the Nez Perce Tribe of Indians, is a recognized tribe of American Indians residing in the State of Idaho. The disputed land is located within the Tribe's area of original occupancy. Its rights to that land were confirmed by two treaties with the United States, concluded in 1855 (12 Stat. 957) and 1863 (14 Stat. 647).

The complaint alleged that the petitioner Tribe was the beneficial owner of a certain 1700-acre tract of land within the Nez Perce Reservation as established by the 1855 treaty. It was further alleged that the respondent Secretary of the Interior was unlawfully treating this land as the property solely of the United States, that he was leasing out portions of

the land without paying the proceeds to the Tribe and was threatening to convey 19 acres of this land to third parties, thus depriving the Tribe of its property without due process of law.

Being part of its ancient heritage, much of which has been lost, the disputed land is of unique and irreplaceable value to the Tribe. The unique character of these tracts is underlined by the fact that they include eight tribal graveyards, on which the Nez Perce Indians have buried their dead for many decades.

The respondent conceded the Tribe's ownership of the land in question prior to 1894 but asserted that in that year the land was acquired by the United States. Petitioners, on the other hand, contend that the land has always remained theirs.

The statute under which the respondent threatened to act in conveying a portion of the land to third parties is the Act of June 4, 1953, 67 Stat. 41, 25 U.S.C. § 293a. This statute authorizes the Secretary of the Interior to convey to local school authorities all right, title and interest of the United States in any land which has been but is no longer needed for federal Indian school purposes. But the statute also provides that the consent of the beneficial owner must be obtained before a conveyance is made of land held by the United States in trust for an Indian or an Indian Tribe. The complaint alleged that the petitioner Tribe, as beneficial owner of the land in issue, had not given its consent to the threatened transfer and that the respondent's threatened action was accordingly illegal by virtue of this statute.

The issues having been thus joined, cross motions for summary judgment were filed. The respondent's

motion asserted, *inter alia*, that the court was without jurisdiction to render judgment as the United States was an indispensable party which had not consented to be sued. The District Court, without hearing argument on the merits, granted respondent's motion for summary judgment and dismissed the complaint. It did so on the ground that this was in effect a suit against the United States, which had not consented to be sued.

The Court of Appeals affirmed the judgment of the District Court. The appellate court held that the question of ownership of the land was "highly debatable" but that it could not be settled in a suit in which the United States was not a party and had not consented to be sued. The court added that if the respondent Secretary "were violating a plain legal duty in regard to the lands, the case might be different." 257 F. 2d 206, 207. A petition for rehearing *en banc* was denied without opinion, one judge dissenting.

REASONS FOR GRANTING THE WRIT

1. The Decision of the Court of Appeals Is Directly Contrary to, and in Conflict With, the Applicable Decisions of This Court.

This Court has repeatedly held that where a suit is brought against a federal officer asserting that the officer is unlawfully depriving the complainant of vested property rights, the suit may be maintained without the presence of the United States. The exemption of the United States from suit does not protect its officers from liability to persons whose rights of property they have wrongfully invaded. *Land* v. *Dollar*, 330 U.S. 731 (1947); *Ickes* v. *Fox*, 300 U.S. 82 (1937); *Philadelphia Co.* v. *Stimson*, 223 U.S. 605 (1912); *United States* v. *Lee*, 106 U.S. 196 (1882).

Thus in *Land* v. *Dollar, supra,* this Court held that the doctrine of sovereign immunity does not apply to a suit to compel individual members of the United States Maritime Commission to return to the plaintiffs certain stock certificates, claimed to be owned by the plaintiffs although record title was in the Commission. The doctrine was likewise held inapplicable in *Ickes* v. *Fox, supra,* where suits were brought against the Secretary of the Interior alleging that his enforcement of an order would unlawfully deprive the complainants of vested water rights; the doctrine was rejected despite the defense that the water rights belonged to the United States.

In *Philadelphia Co.* v. *Stimson, supra,* involving an action to enjoin the Secretary of War from encroaching upon the plaintiff's property in alleged excess of his statutory authority, this Court ruled that it was not a suit against the United States since the complaint alleged an abuse of power which constituted an unwarranted interference with the complainant's property. And in *United States* v. *Lee, supra,* the sovereign immunity defense was denied in a suit brought by the son of General Robert E. Lee to eject certain individual officers of the United States from the family's Arlington estate, there being a highly controverted issue over the ownership of the estate.

The foregoing decisions are decisive of the instant case. They demonstrate beyond doubt that a suit against the Secretary of the Interior alleging that he is about to convey away lands without the consent of the alleged owner in asserted violation of the Secretary's statutory authority, is not a suit against the United States. The failure of the Court of Appeals to apply and adhere to these controlling decisions and

to reject the sovereign immunity doctrine in this instance calls for the invocation of the certiorari jurisdiction of this Court. Fair and consistent administration of justice in the federal courts demands that the applicable law be applied to this case.

Nothing in *Larson* v. *Domestic and Foreign Commerce Corp.*, 337 U.S. 682 (1949), cited by the Court of Appeals below, justifies any adherence to the sovereign immunity doctrine in this instance. In the *Larson* case, this Court merely held that a federal officer could assert the defense of sovereign immunity in an action against him which alleged a common law tort. But the Court was careful to note that the defense is not available where, as here, the officer is sued on the basis of acts in excess of his statutory or constitutional power. In that situation, said this Court, his actions "are *ultra vires* his authority and therefore may be made the object of specific relief." 337 U.S. at 689.[1]

Nor can any of the factors referred to by the court below, to the effect that the United States claims full ownership of the land in question and that the issue of ownership is "highly debatable," serve to distinguish the controlling doctrine of the *Land, Fox, Philadelphia Co.* and *Lee* decisions. In all those cases, the United States asserted full title to the property involved, thereby raising a "highly debatable" issue of

[1] Mr. Justice Douglas, in becoming the fifth member of the Court to join in its opinion in the *Larson* case, stated in his concurrence that the invocation of the sovereign immunity doctrine was essential where the dispute involved the selling of government property. The opportunity to obtain government property, he felt, should not be available where it would "clog this governmental function with intolerable burdens." 337 U.S. at 705.

ownership as between the complainant and the United States. What made the sovereign immunity defense inapplicable was the fact—which is present in this case—that the complaint asserted that the disputed property was never property of the United States and charged that the federal officers had abused or violated their statutory or constitutional power. "The suit rests upon the charge of abuse of power, and its merits must be determined accordingly; it is not a suit against the United States." *Philadelphia Co.* v. *Stimson*, 223 U.S. 605, 619 (1912).

Certainly the fact that the persons claiming ownership of the property in the *Land*, *Fox*, *Philadelphia Co.* and *Lee* cases were non-Indians asserting a fee title, whereas the claimant here is an Indian tribe alleging a trust title, is insufficient to distinguish those cases. The rights of an Indian Tribe in its ancestral land cannot be equated with the equitable rights of bondholders in the mortgaged property of the debtor company, as was done by the court below.[2] The fee title of the United States does not give the United States any proprietary interest. As this Court said in *Minnesota* v. *Hitchcock*, 185 U.S. 373, 387 (1902), "the United States has no substantial interest in [Indian] lands; . . . it holds the legal title under a contract with the Indians, and in trust for their benefit." Clearly, the trust relationship which the United States bears to its Indian wards imposes an even higher standard of accountability on federal officials than when they deal with other citizens. See *Jaybird Mining Co.* v. *Weir*, 271 U.S. 609, 612 (1926).

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[2] The reference in the decision of the Court of Appeals to *Land* v. *Dollar* refers over, *inter alia*, to *Cunningham* v. *Macon and Brunswick R.R. Co.*, 109 U.S. 446 (1883).

Squire v. *Capoeman*, 351 U.S. 1, 6-7 (1956). The trust relationship surely does not lessen the appropriate standards of accountability.

Indeed, any suggestion or implication that a federal official may freely commingle the property of an Indian Tribe with federal property and dispose of the former as he may see fit, in violation of statutory limitations, all in reliance upon the doctrine of sovereign immunity, is not only unconscionable but contrary to this Court's decision in *Chippewa Indians* v. *United States*, 301 U.S. 358, 375 (1937):

> "Our decisions, while recognizing that the government has power to control and manage the property and affairs of its Indian wards *in good faith for their welfare*, show that this power is subject to constitutional limitations and does not enable the government to give the lands of one tribe or band to another or to deal with them as its own." (Emphasis supplied.)

This principle was reaffirmed in *United States* v. *Klamath and Moadoc Tribes*, 304 U.S. 119, 123 (1938).

Although this Court held expressly in *Land* v. *Dollar*, *supra*, that where public officials "unlawfully seize or hold a citizen's realty or chattels, recoverable by appropriate action at law or in equity, he is not relegated to the Court of Claims to recover a money judgment," 330 U.S. at 738, it has also been suggested that availability of a remedy in the Court of Claims might defeat jurisdiction in an injunction suit. But no adequate relief would be available in the instant case in the Court of Claims. As already indicated, the lands in issue are of unique, irreplaceable value to the Nez Perce Indians. They include eight Tribal cemeteries. No money award by the Court of Claims

can possibly be an adequate substitute for the assurance that the Tribal ancestors may continue to rest in peace. No money award can be a substitute for the retention in Tribal ownership of ancient Nez Perce land. The facts of this case clearly call for application of the principles enunciated by this Court in *Land* v. *Dollar*, *Ickes* v. *Fox*, *Philadelphia Co.* v. *Stimson*, and *United States* v. *Lee*.

2. The Court of Appeals, in Holding That an Injunction Will be Denied Unless It Appears From Both Pleadings That a Government Officer Is Violating a "Plain Legal Duty," Misapplied Existing Legal Doctrine and Introduced a Mass of Confusion Into a Vital Area of Public Law.

The concluding sentence of the opinion below stated that the decision might have been different if "the Secretary were violating a plain legal duty in regard to the lands." Heretofore, the "plain legal duty" concept has been applied only in mandamus actions, where efforts are made to compel a government officer to take affirmative action. In such instances, the courts must determine whether the officer's ultimate decision to act is discretionary or whether the underlying statute or regulation imposes on him a mandatory "plain legal duty." See *Work* v. *United States ex rel. McAlester*, 262 U.S. 200, 206-7 (1923); *Wilbur* v. *United States ex rel. Kadric*, 281 U.S. 206, 221 (1930).

On the other hand, the "plain legal duty" rule, distinguishing legislative mandates from grants of discretionary authority, has obviously no bearing on suits to enjoin government officers from acting in excess of their constitutional authority. In the instant case, petitioners wanted to prevent respondent from conveying the disputed land. They do not seek to have

him compelled to convey and compelled to obtain their permission. If respondent decided to drop his plans to convey, petitioners would not object. It is thus not affirmative mandamus that is here sought. The introduction, by the Court of Appeals, of a legal doctrine which has no application to this case serves only to complicate further and unnecessarily an already complicated legal problem.

But if the "plain legal duty" test may appropriately be applied it would still have required reversal of the decision of the District Court. The pertinent statute provides that "the consent of the beneficial owner shall be obtained" by the Secretary before he can convey title to land held in trust for an Indian tribe. 67 Stat. 41, 25 U.S.C. § 293a. The law does not give the Secretary discretionary authority to determine ownership or discretionary authority to obtain Indian consent. The duty prescribed by the statute is as plain and mandatory as the English language will allow.

Thus the appellate court's observation, to be meaningful, must have required more than a mere examination of the language of the statute before determining whether there was a "plain legal duty." In the light of the result reached, two possible chains of reasoning present themselves, neither of which, however, is justified by the previous decisions of this Court:

(1) The court below may have been holding that the legal duty must not only be apparent from the allegations of the complaint, but must remain plain even if the allegations of the answer are considered. In other words, jusisdiction would obtain only where the federal officer concedes that he is wrong. Where

he denies any crucial allegation of the complaint, the issue becomes, as the court below put it, "highly debatable" and jurisdiction is defeated.

Such a result is plainly contrary to the entire line of decisions by this Court dealing with the doctrine of sovereign immunity, and would indeed abolish the exception to that doctrine which this Court has recognized since *Marbury* v. *Madison*, 1 Cranch (U.S.) 137 (1803). As was said in *Ickes* v. *Fox*, 300 U.S. 82, 96 (1937):

> "The motion to dismiss concedes [the plaintiffs'] allegations; but even if they were denied, we should still be obliged to indulge the presumption, in favor of the jurisdiction of the trial court, that respondents might be able to prove them . . ."

And in *Land* v. *Dollar*, 330 U.S. 731, 734-5 (1947), the Court stated:

> "The facts asserted in the affidavits support the view that the 1938 contract called for outright transfer of the shares, not for their pledge. But we put the affidavits to one side . . . [A]lthough as a general rule the District Court would have authority to consider questions of jurisdiction on the basis of affidavits as well as the pleadings, this is the type of case where the question of jurisdiction is dependent on decision of the merits.

(2) The only other possible interpretation of the reference to a "plain legal duty" by the court below is to assume that the court without stating that it did so, went beyond the pleadings, examined the merits, found them "highly debatable" and concluded that a "plain legal duty" could not be found. But where a court gives some but not full consideration to the

merits, how much consideration is it to give? What standards are to be applied? Where is the line to be drawn? On a motion to dismiss for lack of jurisdiction, should the District Court listen to the merits for a while and grant the motion as soon as it concludes that the merits are "highly debatable" and hence there was no "plain legal duty" to act?

Quite obviously, any such standard of action is without precedent and would be impossible to administer fairly or intelligently. The only standard which can be applied is the traditional one of basing initial jurisdiction on the pleadings and assuming for such purposes that the allegations of the complaint are correct. Only if the essential nature and effect of the proceeding "may be such as to make plain that the judgment sought will expend itself on the public treasury or domain, or interfere with the public administration," *Land* v. *Dollar*, 330 U.S. 731, 738 (1947), does it become proper to recognize the sovereign immunity defense.

The confusion resulting from the brief remarks in the decision below and the importance of this issue are such as to command the full review powers of this Court. The great number of suits against government officials arising in the District of Columbia courts is a substantial reason for clarifying and eliminating the highly dubious concepts that are both explicit and implicit in the opinion of the Court of Appeals.

3. The Issues Raised by the Decision Below Are Sufficiently Important and of a Recurring Nature to Warrant Full Review by This Court.

The decision below raises anew and in sharp focus the basic issue involved in the invocation of the sovereign immunity doctrine—the weighing of the orderly processes of public administration against the assertion of rights by an individual citizen or group of citizens. To allow such an assertion of rights, the courts have since *Marbury* v. *Madison*, 1 Cranch (U.S.) 137 (1803), recognized suits against government officers to restrain their illegal acts as an exception to the sovereign immunity doctrine.

In recent years, as this Court has observed, the "climate of opinion . . . has brought governmental immunity from suit into disfavor." *Keifer & Keifer* v. *Reconstruction Finance Corp.*, 306 U.S. 381, 391 (1939), *National City Bank* v. *Republic of China*, 348 U.S. 356, 359 (1955).[3] See also *Federal Housing Administration* v. *Burr*, 309 U.S. 242, 245 (1940). Only where a suit would truly "clog . . . governmental function with intolerable burdens" and where an adequate remedy in the Court of Claims was readily available has it been recognized as a proper defense. *Larson* v. *Domestic Foreign Commerce Corp.*, *supra*. Since the *Larson* case this Court has on numerous occasions entertained suits against government officers

[3] In his dissent in *Snyder* v. *Buck*, 340 U.S. 15 (1950), Mr. Justice Frankfurter observed: "The subject [of sovereign immunity], it has been recognized, is not free from casuistry because of the natural, even if unconscious, pressure to escape from the doctrine of sovereign immunity which—whatever its historic basis—is hardly a doctrine based upon moral considerations. The trend of deep sentiment, reflected by legislation and adjudication, has looked askance at the doctrine." 340 U.S. at 29.

in their public capacity and has decided them on the merits without mention of the sovereign immunity doctrine. See Table 1, p. 19, *infra*. In many recent instances the United States Department of Justice has not even considered it appropriate to raise the doctrine as a defense.

Admittedly, the adjudication of an isolated case on the merits, without reference to any jurisdictional issue, does not give rise to the presumption that the Court has decided the jurisdictional issue *sub silentio*. But where the Court has decided on their merits a long, continuing line of cases, all of which may suffer from the same jurisdictional defect, the question necessarily arises whether the alleged defect really exists.

Federal seizure of the steel industry (*Youngstown Sheet & Tube Co.* v. *Sawyer*, 343 U.S. 579 (1952)), the application of the security program to non-sensitive federal agencies (*Cole* v. *Young*, 351 U.S. 536 (1956)), the negotiation of Status of Forces agreements (*Wilson* v. *Girard*, 354 U.S. 524 (1957)), all involved vital aspects of the sovereignty of the United States. Yet, oddly enough, when these issues were before this Court sovereign immunity was not urged as a defense. But where a few tracts of land in Idaho are involved, vital and irreplaceable to their owners, but of no significance to the Government, sovereign immunity, with all its majestic force, is brought into play.

What appears to be underlying this paradox is the assumption that sovereign immunity should be invoked only where there is a dispute over property in which the United States asserts a proprietary interest. This indeed seems to be the reasoning of the court below.

But this Court has never sanctioned such an interpretation of the doctrine. Not only does it lead to the absurd result of permitting judicial review of vital foreign policy issues, while prohibiting such review in the case of a minor property dispute, it also invites dishonesty by government officials. If the mere unproved assertion of a proprietary interest suffices to invoke the sovereign immunity doctrine, could the result in *Youngstown Sheet & Tube Co.* v. *Sawyer*, *supra*, have been avoided by having the seizure order vest title to the steel industry in the Government, so that government ownership of the property could be pleaded?

Petitioners assert that no special rule should apply to suits against government officers where property is at stake and government ownership of the property is asserted by the defendant but denied by the plaintiff. The unproved, disputed claim of ownership or the presence or absence of tangible or real property should have no relevance in evaluating the applicability of the sovereign immunity doctrine. And the prior decisions of this Court give no support to considering such factors in this context.[4] Our body of law must consist of meaningful rules of conduct and procedure, not of empty forms and phrases which bear no relation to reality. Yet, it is evidently the continuing assumption of the United States and of the lower courts that

[4] The *Larson* case was cited in three of the opinions of this Court in *Joint Anti-Fascist Refugee Com.* v. *McGrath*, 341 U.S. 123, 140, 152, 198 (1951). The *Philadelphia Co.* case was relied on most recently in *Harmon* v. *Brucker*, 355 U.S. 579, 582 (1958). This Court thus clearly considers the same broad jurisdictional principles governing suits against government officers to apply, whether the dispute is over a tract of land or an army discharge certificate.

fee title claims by the Government entitle a federal officer to raise the sovereign immunity shield even if it is not raised in far more vital cases. The thought that "sovereign immunity" can bar judicial consideration of property disputes in which the United States is involved but not of suits which test the authority of federal officials to exercise the most significant powers of sovereignty is so incongruous, yet so prevalent, that it deserves consideration and ultimate repudiation by this Court.

Nearly ten years have elapsed since this Court has spoken definitively on the sovereign immunity doctrine. *Larson* v. *Domestic and Foreign Commerce Corp.*, 337 U.S. 682 (1949). During those years the doctrine has been clouded by various lower court decisions, particularly those of the court below. The Court of Appeals for the District of Columbia Circuit, the court most frequently and most directly confronted with the plea of sovereign immunity, has been deeply divided in its interpretation of the doctrine, especially in light of the *Larson* decision. See Table 2, p. 23, *infra*. In at least one instance Chief Judge Prettyman quite clearly expressed the hope that this Court would provide the Court of Appeals with further guidance in this area of law. Concurring in part in *Chapman* v. *El Paso Gas Co.*, 204 F. 2d 46 (1953), he observed:

> "I would hope that the Supreme Court will agree with my brethren that I am wrong in my reading of the Larson opinion. But unless it does so I am bound by what I understand it to have said." At 55.

This need for further guidance is surely felt even more today for in two instances within recent months

this Court found it necessary to reverse or vacate decisions in which the Court of Appeals for the District of Columbia had relied on the *Larson* case. *Harmon* v. *Brucker*, 355 U.S. 579 (1958), *Spevack* v. *Strauss*, 355 U.S. 601 (1958). The various errors and ambiguities revealed in the opinion below, the deep division in the Court of Appeals on this general question, and the importance of this issue to the preservation of individual rights against bureaucratic tyranny demonstrate the very great need for further clarification of the doctrine by this Court.

CONCLUSION

For the foregoing reasons, petitioners pray that a writ of certiorari issue to review the judgment rendered by the Court of Appeals for the District of Columbia Circuit in this case.

Respectfully submitted,

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December 4, 1958.

TABLE 1

Decisions of the United States Supreme Court on Injunction and Mandamus Actions Against Federal Officers Since the Larson Case.†

Chapman v. *Sheridan-Wyoming Coal Co.*, 338 U.S. 621 (1950)

Suit by lessee of coal mining rights in Federal lands to restrain Secretary of the Interior from leasing similar rights to a competitor;

American Communications Asso. v. *Douds*, 339 U.S. 382 (1950)

Suit by labor union to restrain regional director of National Labor Relations Board from enforcing non-Communist affidavit provision of the Labor Management Relations Act;

Ewing v. *Mytinger & Casselberry*, 339 U.S. 594 (1950)

Suit against Federal Security Administrator to restrain enforcement of the multiple libel provision of the Federal Food, Drug, & Cosmetic Act;

Snyder v. *Buck*, 340 U.S. 15 (1950)

Mandamus action to compel Paymaster General of the Navy to pay plaintiff a widow's allowance;

Robertson v. *Chambers*, 341 U.S. 37 (1951)

Mandamus action to compel president of Army Disability Review Board to remove certain medical reports from records of case before the Board;

† Exclusive of suits to enjoin deportation or authorized by statute.

**Joint Anti-Fascist Refugee Com. v. McGrath*, 341 U.S. 123 (1951)

Suit to enjoin Attorney General from listing plaintiffs as Communist organizations;

Elder v. Brannan, 341 U.S. 277 (1951)

Suit by former employees of Department of Agriculture against Secretary of Agriculture to enforce alleged employment rights;

**Brannan v. Stark*, 342 U.S. 277 (1952)

Suit by dairy farmers to enjoin Secretary of Agriculture from enforcing order concerning payments to be made to co-operative associations;

**Youngstown Sheet & Tube Co. v. Sawyer*, 343 U.S. 579 (1952)

Suit by steel companies to restrain Secretary of Commerce from enforcing an executive order of the President directing federal seizure and operation of plants of steel companies;

Ramspeck v. Fed. Trial Examiners, 345 U.S. 128 (1953)

Suit by organization of trial examiners to enjoin Civil Service Commissioners from enforcing certain orders concerning trial examiners;

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* Cases in which plaintiffs prevailed. In cases in which defendants prevailed, they prevailed on grounds other than sovereign immunity.

International L. & W. Union v. Boyd, 347 U.S. 222 (1954)

Suit by labor union to enjoin certain construction of immigration laws by District Director of Immigration and Nationalization Service;

Allen v. *Grand Central Aircraft Co.*, 347 U.S. 535 (1954)

Suit by company charged with violating Defense Production Act to enjoin Regional Chairman of Wage Stabilization Board from initiating administrative proceedings against company;

Peters v. *Hobby*, 349 U.S. 331 (1955)

Suit by consultant to United States Public Health Service against Secretary of Health, Education & Welfare to have his removal and debarment from federal employment declared invalid;

Cole v. *Young*, 351 U.S. 536 (1956)

Suit by former government employee against Civil Service Commissioners to have his discharge from the government service declared invalid;

Service v. *Dulles*, 354 U.S. 363 (1957)

Suit by former Foreign Service Officer against Secretary of State to have his discharge from the government service declared invalid;

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* Cases in which plaintiffs prevailed. In cases in which defendants prevailed, they prevailed on grounds other than sovereign immunity.

Wilson v. *Girard*, 354 U.S. 524 (1957)

Suit by American soldier to enjoin Secretary of Defense from delivering him to Japanese authorities for trial in Japanese courts;

**Harmon* v. *Brucker*, 355 U.S. 579 (1958)

Mandamus action by soldiers to direct Secretary of the Army to issue honorable discharge certificates to them;

**Spevack* v. *Strauss*, 355 U.S. 601 (1958)

Remand to allow amendments to complaint in suit against Atomic Energy Commissioners to enjoin them from publishing contents of plaintiff's patent application;

**Kent* v. *Dulles*, 357 U.S. 116 (1958)

**Dayton* v. *Dulles*, 357 U.S. 144 (1958)

Suits by United States citizens against Secretary of State for declaratory judgments requiring Secretary to issue passports.

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* Cases in which plaintiffs prevailed. In cases in which defendants prevailed, they prevailed on grounds other than sovereign immunity.

TABLE 2

Opinions of Court of Appeals for the District of Columbia Circuit Since Larson Case, Illustrating Division of Court on Sovereign Immunity Issue.

Cases	Judges who would assume jurisdiction	Judges who would deny jurisdiction
(A) Where ownership of property is involved		
Dollar v. *Land* 184 F. 2d 245 (1950)	Clark	
Land v. *Dollar* 190 F. 2d 366 (1951) 190 F. 2d 623 (1951)	Miller Prettyman	
Story v. *Snyder* 184 F. 2d 454 (1950)	Miller (dissent)	Edgerton Washington
Seiden v. *Larson* 188 F. 2d 661 (1951)		Edgerton Washington Proctor
Chapman v. *El Paso Natural Gas Co.* 204 F. 2d 46 (1953)	Clark Proctor Prettyman (conc. in part)	
West Coast Expl. Co. v. *McKay* 213 F. 2d 582 (1954)	Stephens Clark Miller Prettyman Bazelon	Washington Edgerton Fahy (concur in result)
Clackamas County v. *McKay* 219 F. 2d 479 (1954)	Prettyman Miller	Edgerton (dissent)
McKay v. *Central Electric Power Corp.* [redacted] 2d 623 (1955)		Bazelon Edgerton Bastian
McKay v. *Wahlenmaier* 226 F. 2d 35 (1955)	Prettyman Miller	Washington (dissent)
Nez Perce Tribe v. *Seaton* 257 F. 2d 206 (1958)		Edgerton Bazelon Fahy

Cases	Judges who would assume jurisdiction	Judges who would deny jurisdiction
(B) Where personal liberty is involved		
Joint Anti-Fascist Ref. Comm. v. *Clark* 177 F. 2d 79 (1949)	Edgerton (dissent)	Clark Proctor
Bailey v. *Richardson* 182 F. 2d 46 (1950)	Edgerton (dissent)	Prettyman Proctor
Fay v. *Miller* 183 Fv 2d 986 (1950)	Edgerton Bazelon Fahy (not part of decision, mere dictum)	
Harmon v. *Brucker* 243 F. 2d 613 (1957)	Bazelon (dissent)	Prettyman Danaher